PART IV

SECTION 2-C—(ii)

STATUTORY ORDERS ISSUED BY THE STATE GOVERNMENT UNDER THE CENTRAL ACTS AND STATE ACTS.

GOVERNMENT OF MYSORE.

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT

Labour Dispute.—Industrial Dispute between the workmen and the management of M/s. F. Fibre Corporation, A-83, Industrial Estate, Rajajinagar, Bangalore-10.

Award of the Labour Court, Bangalore—Published.

Read the following papers.—

(i) Letter No. 1993/70-71, dated 17th December 1970 from Sri A. N. Sundara Murthy, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 17th day of December 1970.

Present

Sri A. N. Sundara Murthy, B.A., B.L.,
Presiding Officer.

Reference No. 70 of 1969.

I Party.—Workmen represented by the General Secretary, Bangalore General Labour Union, Subedar Chatram Road, Bangalore-9.

Vs.

II Party.—The Management of M/s. F-Fibre Corporation, A -83 Industrial Estate, Rajajinagar, Bangalore-10.

Reference

O. No. FCL 179 *LLD* 69, *dated* 2*nd May* 1969.

Award

1. The Government of Mysore in their Order No. FCL 179 LLD 69, dated 2nd May 1969 have referred an industrial dispute existing between the above named parties to this court for adjudication on the points of dispute noted below :-

> "Whether the management of M/s. F. Fibre Corporation, A-83, Industrial Estate, Rajajinagar, Post Box No. 4, Bangalore 10 is justified in retrenching Sri Padmanabhaiah, weaver with effect from 25th June 1968 ? If not, is Sri Padmanabhaiah entitld for reinstatement with back wages and continuity of service or any other relief ?"

2. On behalf of the first party workman claim statement is filed as follows :—The first party workman is a permanent workman of the second party. He was working both on powerloom and handloom. He joined service in the month of June 1965. He was illegally, wrongfully, and unjustifiably retrenched from service from 25th June 1968. From March 68 the first party workman was not provided with continuous work and he was systematically harassed and ultimately he was victimised as he refused to tow the line of the Management and continued actively in the first party union. The service conditions of the workmen of the second party were most unsatisfactory. Even the statutory benefits like leave with wages, national and festival holidays, weekly holidays with wages, bonus etc., were not given to the workers. The workers were forced to work for 12 hours a day. Those who resisted were mercilessly thrown out. There was insecurity of service. The wages paid were meagre. Many workers were not given the benefits such as E.S.I. and provident Fund. In order to redress their grievances many of the employees of the second party joined the first Party union in the month of June 1968. In the month of February 1968 the first party workman and 23 others were wrongfully and illegaly dismissed from service by the second party. After a great struggle and at the intervention of the Labour and Conciliation Officer all the workers were reinstated with continuity of service and were paid *Ex-gratia* payment of Rs. 60 each. From that day onwards the management of the second party nursed a grudge against the workmen who joined the first party union and went on harassing the workers in one way or the other. The management of the second party devised

number of ways to compel the workers to resign from the first party union. When this unfair labour practice was opposed and resisted the management began to harass the workmen in an increased manner and ultimately they started their own union and began to give facilities and benefits to their members whereas a step motherly treatment was meted out to the members of the first party union. In order to resist unfair labour practice and the policy of the management of the workers were constrained to resort to a legal strike for six days. At the intervention of the Labour and Conciliation Officer the strike was called off. Even thereafter the management not only continued their unfair labour practice but increased them, openly stating that all the members of the first party union will be either retrenched or dismissed or their wages will be reduced to such an extent that it will be impossible for them to continue in their jobs and they will be forced to quit the jobs voluntarily. The management really reduced the above said threat into reality, from the month of July and August 1968. The workers were all piece rated. Their wages used to depend upon the supply of raw materials such as warps, wefts, designs etc., The management deliberately delayed the supply of those materials which in turn very badly affected the total wages of the weavers. The intention of the second party was to get rid of the members of the first party union. The first party workman was weaving on power looms for some time. He was provided with weaving work on handloom in A.83 building of the factory. The management in the guise of dismantling the handloom section retrenched the services of the first party workman all though he was the seniormost workman knowing the powerloom weaving work as well. He was served with a retrenchment notice dated 25th Aug. 1968 on 27th Aug. 1968 wherein it was stated that his services were no longer required as the management had a huge accumulation of stocks of the variety of fabric which was woven by the first party workman. The compensation as per the provisions of the Industrial Disputes Act were not paid to him even though he presented himself at the office of the second party on 27th June 1968. Only at the stage of conciliation very ingeniously and cunningly the management produced before the conciliation officer a cheque drawn on the Syndicate Bank for an amount of Rs. 172-50. The Management which refused to pay the compensation to the first party workman on 27th June 1968 has some how later realised the blunder and showed a cheque before the conciliation officer to circumvent the provisions of the Industrial Disputes Act. The retrenchment of the services of the first party workman is unjustified for the following grounds :—

(A) The retrenchment compensation as contemplated under Section 25F (b) has not been paid to the workman.

(B) No notice in the prescribed manner is served on the appropriate Government as required under Section 25F (c) of the Industrial Disputes Act.

(C) The Procedure for retrenchment as required under Section 25G of the said Act is not follows.

(D) The retrenchment is colourable and has been resorted to only to victimise the workman.

(E) In the guise of retrenchment the Management has victimised the workman for his trade union activity.

(F) No notice has been served on the workman (with wages for the notice period) as required under Section 25F (a).

(G) The Industrial Disputes (Mysore) Rules 1957 especially Rules No. 77 and 78 have been grossly violated by the Management.

It is prayed that the first party may be reinstated in his service with continuity of service and back wages.

3. On behalf of the second party rejoinder is filed as follows :— The second party has newly set up a small scale industry for the manufacture of monofilment in the industrial estate, Rajajinagar. The Management had installed some handlooms. The first party workman was working as a weaver on one of the handlooms. The management found that sufficient orders were not forthcoming for the type of fabric that were woven on handlooms on which the first party workman and two other weavers namely Eswaran and Shanmugam were working. Stocks of that fabric accumulated in the stores. Hence it was decided to stop production of the fabric and also to dismantle that loom and replace the same by power looms. Notice was issued in that behalf on 25th June 1968 to all the three workmen intimating that they would be retrenched from service with effect from 27th June 1968 and they could contact the office for payment of their compensation and other dues as per the provisions of the Industrial Disputes Act. The first party workman refused to receive the payment of the notice pay and service compensation although the same was offered to him. Having offered payment the management did comply with the provisions of Section 25F (a) and (b) of the Industrial Disputes Act. The requirement of notice to Government under sub-section (c) has been held by the Supreme Court to be not mandatory. The retrenchment of the first party workman is fully justified. He had never worked on powerloom. Therefore the management had no alternative but to retrench him. The other handloom weaver Shanmugam offered to purchase the second handloom and weave fabric in his own residence.

Eswaran also accepted the retrenchment. The offer made to Shanmugam was also made to the first party workman and it still stands. The retrenchment was fully justified and it was not rendered illegal or invalid for any of the reasons set out in the claim statement. It is denied that the second party was resorting to unfair-labour practice or wanted to get rid of any workman whether he was a member of the first party union or any one else. The retrenchment was necessary and justified. The retrenchment was *bonafide* and not by way of victimisation. Hence it is prayed that the reference may be rejected.

4. The following issues are framed :—

(1) Whether II Party was justified in retrenching I Party with effect from 25th June 1968 ?

(2) Whether I Party is entitled to reinstatement with continuity of service and with back wages ?

(3) To what relief, if any, is I Party entitled to ?

5. On behalf of the management the partner of the second party is examined as M. W. 1. In the course of his evidence he states that the second party is manufacturing mosquito curtains using synthetic fabric weaving on powerlooms. In 1964 when the factory was started the work was being done only on handlooms. The handloom section was closed gradually substituting the same by power looms. The workers working on handlooms were requested to take training in powerlooms. By giving training they picked up the work on power looms whereas the first party workman did not avail of the opportunity. Similarly one other workman Eswaran also did not take training. The last three handlooms were dismantled in June 1968 and the handloom section was closed. At that time the first party workman was working in the handloom section. Before closing down the handloom section a notice was issued as per Ex. M. 1. In pursuance of the said notice the first party workman and two others were retrenched.

6. The first party workman is examined as W. W. 1. He states that he was working before on handloom and powerloom as a weaver. He received Ex. W. 20 on 27th June 1968. This is the original of Ex. M. 1. He admits that another worker Shanmugam was also retrenched like himself.

7. In this case issue No. 1 is framed as follows :—

" Whether the second party was justified in retrenching I Party with effect from 25th June 1968 ? "

It is contended on behalf of the second party that even though the word "retrenchment" is used in the points of dispute referred for adjudication to this court as per the Order of Reference made by the Government; the point for consideration would be whether the second party closed down one of its units and whether such a closure was genuine and real and if the court comes to the conclusion that the closure is genuine and real then the relief that should be given to the first party workman would be only under Section 25 FFF. It is contended on behalf of the second party from what is stated in Ex. M. 1 and also the facts disclosed in the rejoinder filed on behalf of the second party at will be clear that the second party closed down one of its uneconomical units once and for all and such a closure would come under Section 25FFF. Even though it is not specifically stated in the rejoinder that the closure is under Section 25 FFF from the facts pleaded and also from the evidence let in it would be clear that the second party closed down permanently one of its units and such closure is genuine and the provisions of section 25F are not attracted. It is further urged on behalf of the second party that even though there is a reference to Section 25F in the rejoinder and even though the word " retrenchment" is used it would not alter the position since from the facts pleaded it would be clear that the handloom unit of the second party was completely closed. Hence it amounts to closure of one of the units and it falls under Section 25FFF. It is contended on behalf of the second party under the circumstances referred to above the second party is justified in closing down one of the units and such a closure would fall under Section 25FFF. On behalf of the second party reliance is placed on the decision reported in 1970 (37) F. J. R. 231.

8. It is contended on behalf of the first party workman that even granting the handloom section is completely closed; since it is only a portion of the business carried on by the second party it would not amount to a closure of the business as contemplated under Section 25FFF. According to the first party workman just to victimise the first party workman for his labour union activities the second party has retrenched him without following the provisions of Section 25F. Hence the first party workman is entitled to reinstatement with continuity of service and back wages.

9. In this case it is admitted that at the relevant period there were two units of the second party, one unit is that of the handloom section wherein only three persons were working *i. e.*, the first party workman and two others namely Eswaran and Shanmugam. The other unit is the Power loom unit. From the evidence of M. W. 1 it is

clear that the quality of the fabric woven on the handloom is not as fine as it is of the fabric woven on the power loom. The demand for the handloom fabric gradually declined. At the earliest stage in Ex. M. 1 it is stated that the second party had decided to dismantle the handlooms since of late the second party is not receiving any orders for the type of fabric which is woven on the handloom and huge stocks of that variety had accumulated in the stores and hence the second party has decided to stop production of such fabric and also decided to dismantle the handlooms. From the evidence let in behalf of the second party it is established that the second party has closed down the handloom section once and for all and after such closure no handloom fabric was manufactured in the establishment of the seocnd party. From the evidence let in on behalf of the second party it is clear that the closure of the handloom section was genuine and real. In view of these facts as submitted on behalf of the second party the question for consideration would be only whether the closure of the handloom section would fall under Section 25FFF of the Industrial Disputes Act. Even through in the rejoinder filed on behalf of the second party the word " closure " and " S.25FFF " are not specifically mentioned it would not matter much. From the rejoinder filed on behalf of the second party it would be seen that the second party intended to convey was that it had closed a part of its business; namely, the handloom unit. Hence it will have to be seen whether the closure is under Section 25FFF. As stated in 1970 (37) F. J. R. 231, eight out of 21 depots had been closed down. In the said decision the Supreme Court has held that the closure of the 8 depots by the company even if it is held not to amount to closure of business of the company, cannot be interferred with by an industrial tribunal if, in fact, that closure was genuine and real. In the said decision it is also observed that the closure of the buisness of the depots was necessitated by reasons of expediency in as much as the company had to reduce its purchases in its quest for quality and its desire to run the business economically. In this case also the closure of the hand loom unit was necessitated by reason of the fact that the fabric produced on the handlooms were not as good as those produced on power looms and the demand had declined and huge stocks had accumulated. In the above said decision it is also held that on the finding that there was a genuine closure of the business that used to be carried on at the depots no question could arise of the retrenchment being set aside by the Tribunal. From the decision of the Supreme Court referred to above it is clear that an employer could close down a branch or a depot in which case what is to be looked into is whether such a closure is genuine and real. If the court comes to the conclusion that such a closure was genuine and real, it cannot interfere with such a closure. In this case from the evidence available it is established that the closure of the hand-

loom unit of the second party was genuine and real and hence this court cannot interfere with it. In view of this finding there is no need to give finding on other issues and also refer to other authorities cited on behalf of both the parties. From the above finding I hold that the first party workman will not be entitled to reinstatement with back wages. If at all he has got any remedy he will have to work out such a remedy for compensation under Section 25FFF of the Industrial Disputes Act.

10. In the result I make an award rejecting the reference with no order as to costs.

A. N. SUNDARA MURTHY,
Presiding Officer,
Labour Court, Bangalore.

ORDER

Bangalore dated the 24th *December* 1970.

S O. 144.—WHEREAS by State Government Order No. FCL 179 LLD 69, dated 2nd May 1969 the Industrial Dispute between the workmen and the management of M/s. F. Fibre Corporation, A-83, Industrial Estate, Rajajinagar, Bangalore-10, was referred to the Labour Court, Bangalore for adjudication.

AND, WHEREAS the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute.

NOW, THEREFORE in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette.*

By Order and in the name of the Governor of Mysore,

[*No. FCL* 278 *LLA* 70.]

ANIRUDHA DESAI,
Under Secretary to Government,
Food, Civil Supplies and Labour Department.